S. HRG. 108–441

OUTFITTER POLICY ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 1420

TO ESTABLISH TERMS AND CONDITIONS FOR USE OF CERTAIN FEDERAL LAND BY OUTFITTERS AND TO FACILITATE PUBLIC OPPORTUNITIES FOR THE RECREATIONAL USE AND ENJOYMENT OF SUCH LAND

MARCH 3, 2004

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OUTFITTER POLICY ACT

WEDNESDAY, MARCH 3, 2004

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 2:32 p.m., in room SD–366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

OPENING STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Well, good afternoon, everyone. The Subcommittee on Public Lands and Forests will be in order. Let me thank all of you for being here. We were in hopes that ranking member, Senator Wyden, would be attending. I understand he has been called off to the Intelligence Committee. You may want to make the general assumption, therefore, that he chose the Intelligence Committee over a committee that is viewed as less intelligent.

[Laughter.]

Senator CRAIG. No, I do not think that is the case at all.

[Laughter.]

Senator CRAIG. Ron and I have worked very well in a bipartisan way over the last several years on a good number of issues. Last year, I think both of us were extremely proud of our healthy forest legislation, and the ability to get that through at a time when others were placing substantial odds against us achieving such a goal.

So we do have a reputation of working in a bipartisan way to solve the problems addressing critical issues, especially in public land management, and we are going to work hard to continue to do so.

As it relates to the Outfitter Policy Act, we see no difference in that, and I hope I can gain the support of Senator Wyden. We are working closely with him and his staff, and the staff on the minority side of the committee now, to be able to do just that. I know he wanted to be here to introduce a member of the panel, but I will do that in his absence.

Today, we are hearing testimony on S. 1420, the Outfitter Policy Act. This bill is very similar to legislation I have introduced in past Congresses. As that legislation did, this bill will put into law many of the management practices by which the Federal Land Management Agencies have successfully managed the outfitter and guide industry on Federal lands for many decades.

Previous hearings and discussion on versions of the legislation have helped to shape the issues that are before us today in the hearing. We have had the opportunity to examine historical practices, and find those that facilitate consistent, reliable outfitter services to the public.

I know our staffs have already been having discussions on the legislation, and I would like to propose that we continue to work together with the additional ideas we will gain here today at this hearing to refine the bill with a commitment to completing bipartisan substitute language that can be reported from this committee and passed this year.

It is my intent that we move a bill to the floor this year. I am certainly going to work closely with the House to see if that is a doable proposition.

Many outdoor enthusiasts possess the skills to go out on their own to recreate and enjoy our public lands, and we must protect their access, but many Americans want and seek out the skills of experienced commercial outfitters and guides to help them enjoy a safe and pleasant journey through our great outdoors. The Outfitter Policy Act's primary purpose is to ensure accessibility to public lands by all segments of our population, and that outfitters and guides across this Nation can continue to provide opportunities for outdoor recreation for the many families and groups who would otherwise find the back country inaccessible.

Congress has already addressed this issue with respect to the National Park System's permits in the National Park Omnibus Act of 1998. It is appropriate to now provide consistency in national policy by setting similar legislative standards for other public land systems, such as the Forest Service and Bureau of Land Management lands. These agencies are now without congressional guidance, and rely on rules, permit terms and conditions, and other approaches that are often left to local agency personnel, rather than driven by national policy.

This Act would provide the basic standards necessary to sustain the substantial investment often needed to operate a business that provides the level of service demanded by the public; however, it also provides the agency ample flexibility to adjust use, conditions, and permit terms, all of which must be consistent with agency management plans and policies for resource conservation. The Outfitter Policy Act strives to provide a stable and consistent regulatory climate, which encourages qualified entrants to the guide outfitting business, while giving agencies and operators clear direction.

Today, we will hear from the administration, and several witnesses representing various perspectives of the outfitters' industry. We are eager to hear about your perspectives and concerns, and appreciate your assistance in addressing these important issues. So now let me welcome all of you to the committee, and, of course, welcome Dave Tenny, the Deputy Undersecretary for Natural Resources and Environment at the Department of Agriculture, Jim Hughes, Deputy Director for the Bureau of Land Management at the Department of the Interior. I would also like to welcome other witnesses, David Brown, executive director of America Outdoors, Dave Simon, director of outdoor activities for the Sierra Club, and

Todd Davidson, chairman of the Western States Tourism Policy Council.

Again, let me thank all of you very much for your attendance today and your effort on behalf of this legislation, from the standpoint of your perspective. So as I have said earlier, we will attempt to refine the proposed legislation and move it out of this committee.

With that, let me first turn to Deputy Undersecretary for Natural Resources and the Environment, Dave Tenny. Dave, welcome.

STATEMENT OF DAVID TENNY, DEPUTY UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. TENNY. Thank you, Mr. Chairman. To begin with, I have not had the opportunity to do this yet. I believe Mark has, but first and foremost, I want to express our deepest thanks to you, and I wish Mr. Wyden were here as well for the wonderful work that this committee and you two gentlemen, in particular, did on the Healthy Forest Restoration Act. I wish I could have lots of time to tell you about the impact that that is having on the agency, but it is profound, and we are grateful for that vote of confidence, and the policy behind it.

Turning to the subject at hand. I have only three things that I would like to say, in the interest of time. First of all, as you know, the Department of Agriculture and the Forest Service place great value on the outfitters and guides that service the public that use our Federal lands, and especially the National Forest System lands. These are among our most highly valued constituents and partners. They do a wonderful service. They help the public enjoy the land and see the land, in some cases where they would otherwise not be able to do. They are a very highly valued partner in the use and the management of our lands.

Secondly, I think the agency recognizes that it can always do things better, and especially in the area of permit administration. We are trying to make improvements, and we are in the process of doing things better. We have some distance to go. We recognize that. We believe the trajectory we are on is the right one, but we want to continue to improve.

Thirdly, we support this legislation. I think we are aligned in our agreement on the policy objectives of this legislation, what it wants to accomplish, and we are prepared to work with you on it, and address, I think, the mutual objectives that we have to improve the way we administer our permits for outfitters and guides.

I could go on and on, but I think that is essentially what we want to say. So with that, Mr. Chairman, I will turn the time over to my colleagues, and just express again our willingness to work with you and the committee to achieve the objectives in this bill.

[The prepared statement of Mr. Tenny follows:]

PREPARED STATEMENT OF DAVID TENNY, DEPUTY UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman, I want to thank you for the opportunity to appear before this committee to give you our views on S. 1420, the Outfitter-Policy Act of 2003, a bill to establish terms and conditions for use of certain Federal land by outfitters and to facilitate public opportunities for the recreational use and enjoyment of the land. I would like to acknowledge the efforts that the committee has put forth to utilize our

assistance in developing this legislation. We appreciate the opportunities that have been afforded to us and we look forward to this continued relationship. The Department supports the purposes of this legislation and we would be pleased to work with the committee on this bill.

Outfitters and guides, educational institutions, and organizations provide public services that are essential to the use and enjoyment of our National Forests and Grasslands. The Forest Service recognizes the value of these recreation service partners in achieving management goals, such as providing access to those who might not otherwise be able to use our federal lands, offering interpretation and education opportunities, and helping those who lack specialized skills. The Forest Service manages the outfitting and guiding program by issuing special use permits which authorize this type of activity. We currently have approximately 5,500 permit holders who provide very necessary and sought-after services. We collect approximately $4 million dollars each year in outfitter-guide permit fees.

We understand and support efforts to improve consistency and fairness in our application of policy and in the administration of permits that this legislation addresses. The Forest Service is currently developing policy that incorporates many of the provisions contained in this legislation. Policy is being developed for an up to ten-year term for outfitting and guiding permits to be consistent with the U.S. Department of the Interior. We are examining ways to reduce the layers of fees that some outfitters and guides face when entering areas that have additional fees, such as entrance or facility use fees.

We are working jointly with the Department of the Interior in developing a joint Forest Service and BLM permit application to improve customer service and make the permitting process more efficient and effective. A suggestion to enhance Service First opportunities would be to incorporate into this legislation a provision to give the Forest Service and BLM authority to issue a single permit for outfitting and guiding which would be valid on lands administered by both agencies and be under the authority of the lead agency that issues the permit. This would further reduce the amount of paperwork and permit authorizations required for outfitters and guides that operate on land under both jurisdictions.

The challenge to us is to provide outfitting and guiding opportunities that are efficient and successful while also providing a pleasant, safe, and healthy visitor experience that protects the environment and addresses public needs. We believe that S. 1420 contains many of the provisions that may help us to accomplish these goals. We welcome the opportunity to work with the committee to advance these objectives.

Thank you for the opportunity to share the Department's view on this legislation, and I will be happy to answer any questions you may have.

Senator CRAIG. Well, Dave, thank you very much.

Jim, I will turn to you. Deputy Director, BLM, Jim Hughes.

STATEMENT OF JIM HUGHES, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. HUGHES. Mr. Chairman, thank you for this opportunity to present the views of the Department of the Interior on S. 1420, the Outfitter Policy Act. In the interest of time, I will summarize the remarks that we have submitted for the record.

We, too, believe outfitters and guides provide key services to the visitors on the public lands. Under permits issued by Department agencies, outfitters and guides offer a wide variety of activities for outdoor recreation, such as hunting, river rafting, back country horse trips, and wilderness adventures. Outfitters and guides provide services and opportunities to populations that may not otherwise gain access to public lands, including important educational and interpretative services.

In fiscal year 2003 alone, the BLM issued over 3,000 permits to outfitters and guides for activities across our 261 million acres of public lands. This generated over $3 million in that fiscal year. We understand and appreciate the economic impact of these activities, as the majority of the outfitters and guides are individuals or small

businesses whose services are critical elements of local rural communities.

The majority of the Department of the Interior outfitter and guide permits that this bill addresses are issued by the Bureau of Land Management. Ensuring consistent application of our permitting system, a safe and satisfying visitor experience, a mutually beneficial working relationship with outfitters and guides, and preservation of natural and historic resources are priorities for the BLM recreation program. Other department agencies also issue permits to outfitters and guides, as you have already mentioned.

The BLM has taken administrative action on many of the issues raised in S. 1420. For example, just recently, we announced updated rules for special recreation permits, which changed the potential tenure of permits from the previous 5 years, to as many as 10 years. This change was made to improve the opportunities for outfitters to engage in and invest in successful business ventures, while giving land managers the flexibility to respond to changes and resource conditions, and also unforeseen changes in public demand, or other reasonable and substantial changes, such as management and activity plan updates.

The Department supports the purposes of S. 1420, especially the provisions related to permit performance evaluation, permit renewal, revocation and suspension, and liability. We share a common goal to develop consistent terms and conditions, while facilitating public opportunities for recreation use and the enjoyment of public lands.

The Department does have concerns with some of the provisions in the current bill. We look forward to working closely with the committee to address them, so that we can provide the best services to both outfitters and visitors on public lands.

The Department of the Interior agencies strive to work in the most reasonable way to accommodate the needs of running and outfitting guide services. The Department also must manage the outfitting programs to provide a fair market return to the American public, and ensure that the fee system is consistently and fairly applied to all permitees.

We support the concept of allowing flexibility in the fee structure to account for unique situations or regional differences, we want to talk to the committee about section 5, as drafted. We may need a little more guidance, and maybe some report language could help us on this section.

Under this legislation, the Department would have 180 days to act on the transfer of an outfitter permit. There may be any number of extenuating circumstances requiring agencies to take more than 180 days outlined in the bill. We think more flexibility for these transfers better ensures the safe and responsible use of our public lands. Finally, we would like to clarify some definitions and other technical issues in S. 1420.

In conclusion, Mr. Chairman, the Department will continue to work closely with the outfitters and guides to improve customer service and resource management. We would like to work with the committee to address the issues raised in this statement, as well some technical matters. We thank you for the opportunity to share

our views on S. 1420. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Hughes follows:]

PREPARED STATEMENT OF JIM HUGHES, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT

INTRODUCTION

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior (Department) on S. 1420, the Outfitter Policy Act. The Department of the Interior shares the Committee's interest in enhancing opportunities for recreational use of the nation's public lands.

BACKGROUND

Outfitters and guides provide key services to visitors on the public lands. Under permits issued by Department agencies, outfitters and guides offer a wide variety of activities for outdoor recreation, such as hunting, river rafting, backcountry horse pack trips, and wilderness adventures. We do not underestimate the value of these services. Indeed, we view outfitters and guides as important partners who provide valuable services that contribute to ensure safe and enjoyable experiences for those who visit and recreate on our public lands. They cater to those who view the public lands as gateways to adventure and discovery. Outfitters and guides provide services and opportunities to populations that may not otherwise gain access to public lands, including important educational and interpretive services. Of the approximately 53 million visitors in 2003, we estimate that about 1 million employed outfitters and guides while recreating on BLM-managed lands. In FY 2003 alone, the BLM issued over 3000 permits to outfitters and guides for different types of recreational activities across 261 million acres of public land. The BLM collected $3 million in fees from these permits in FY 2003.

We recognize the important role we must play not only in fostering the development of these opportunities for our visitors, but also in making every effort to ensure that the process for outfitters and guides is efficient and fair while protecting our valuable resources. We also understand and appreciate the economic impact of these activities as the majority of outfitters and guides are individuals or small businesses whose services are critical elements of local economies.

The majority of outfitter and guide permits this bill addresses are issued by the Bureau of Land Management (BLM). The BLM permitting system is codified in regulations (43 CFR 2932) and is managed through a Manual and Handbook. Ensuring consistent application of our permitting system, a safe and satisfying visitor experience, a mutually beneficial working relationship with outfitters and guides, and preservation of natural and historic resources, are priorities for the BLM recreation program.

Other Department agencies also issue permits to outfitters and guides. At the U.S. Fish and Wildlife Service, most outfitter or guide permits are handled on a case-by-case basis, considering biological soundness, effects on other refuge programs, and public demand. The Bureau of Reclamation manages outfitters and other visitor services through commercial concession operations under a licensing authority using a special recreation permit.

BLM INITIATIVES

The BLM has taken administrative action on many of the issues raised in S. 1420. For example, in order to provide better customer service, reduce administrative paperwork, and provide consistent law enforcement on BLM-managed lands, the BLM issued updated rules for "Recreation Use Permits" and "Special Recreation Permits" on February 6, 2004. One key provision changes the potential tenure of permits from the previous 5 years to as many as 10 years. This change was made to improve the opportunities for outfitters to engage in, and invest in, successful business ventures, while giving land managers the flexibility to respond to changes in resource condition, unforeseen changes in public demand, or other reasonable and substantial changes, such as management and activity plan updates.

To help address cross-jurisdictional situations, the BLM and the Forest Service have developed cooperative arrangements to improve customer service. In areas where an outfitter or guide is crossing Federal land jurisdictions, the BLM and Forest Service have worked to ensure permittees are only paying for the time spent on public lands and there is no duplication of fees. In some areas we have coordinated management of a resource so that one agency manages the permitting, and outfit-

ters and guides need interact with only one agency. Examples of this can be found on the Rogue River in Oregon and the Kern River in California.

Also, the BLM provides discounts on standardized fees based on individual circumstances and has begun to simplify auditing arrangements with willing industry partners.

S. 1420

The Department supports the purpose of S. 1420, especially the provisions related to permit performance evaluation; permit renewal, revocation and suspension; and liability. We share a common goal to develop consistent terms and conditions while facilitating public opportunities for recreational use and enjoyment of public lands. As discussed earlier, the Department has recently developed new regulations that we believe are consistent with the purposes of this legislation. The Department does have concerns with some of the provisions as outlined in the current bill. We look forward to working closely with the Committee to address them so that we can provide the best services to both outfitters and visitors on our public lands.

First, the Department of the Interior agencies strive to work in the most reasonable way to accommodate the needs of running an outfitting or guide service. The Department also must manage the outfitting programs to provide a fair market return to the American public and ensure that the fee system is consistently and fairly applied to all permittees. We support the concept of allowing flexibility in the fee structure to account for unique situations or regional differences, but we are concerned that Section 5 of S. 1420, as drafted, does not provide sufficient guidance on this point. We would like to work with the Committee and sponsor of the bill to clarify how or when the bureaus should consider financial obligations or reasonable business opportunities as a part of determining fees. We also believe it is important to more clearly define the terms and expectations to ensure that the bureaus can precisely implement the legislation and carry out congressional intent.

Second, under this legislation the Department would have 180 days to act on the transfer of an outfitter permit. There may be any number of extenuating circumstances requiring agencies to take more than the 180 days outlined in the bill. We think more flexibility for permit transfers better ensures the safe and responsible use of the public lands. Again, we look forward to working with the Committee to address this concern with a time frame that addresses these concerns and ensures fairness to operators.

We believe the definition of "Commercial Outfitted Activity," in S. 1420, may inadvertently include activities not intended to be covered by this legislation. For example, there are certain academic activities involving grade school, high school or college students that take place on public lands which are designed to further one's knowledge and understanding of resource and science-related issues that could conceivably fall under the definition of a "Commercial Outfitted Activity." We would also like to clarify the provisions of the bill concerning two-year temporary permits. We suggest temporary permits should have terms not to exceed one year. If an outfitter's performance is found to be satisfactory, a second one year extension is routinely granted. This method has worked well in the past and provides us the flexibility to provide the highest standards in visitor protection and resource management.

Finally, many of the important outfitted activities the Department manages occur on waterways. Including Federally-managed waterways in the definition of "Federal land" would be very beneficial in developing comprehensive legislation.

CONCLUSION

The Department will continue to work closely with the outfitters and guides to improve customer service and resource management. We look forward to working with the Committee to address the issues raised in this statement as well as some technical corrections. Thank you for the opportunity to share the Department's views on S. 1420. I will be happy to answer any question you may have.

Senator CRAIG. Jim, thank you very much.

We have been joined by Senator Craig Thomas of Wyoming.

Now, let me turn then to David Brown, executive director of America Outdoors. You are welcome before the committee.

STATEMENT OF DAVID L. BROWN, EXECUTIVE DIRECTOR, AMERICA OUTDOORS, KNOXVILLE, TN

Mr. BROWN. Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify today in support of the Outfitter Policy Act. I will summarize my written testimony, which I ask that you include in the record.

As you identified, outfitters are an important component of the agency's recreation delivery system, with several thousand permits issued for outfitting and guiding among the agencies covered by the bill. We support S. 1420 for the following reasons. One, as you identified, Senator, the National Park Service has done the same in the National Park Omnibus Act of 1998, and outfitting and guiding is far more significant in BLM and Forest Service lands. It is an important component of the National Park Service, but not quite as prominent as it is in the parks.

S. 1420 is in the public interest, because it makes qualification service to the public resource protection the primary criteria for issuing permits for outfitting and guiding, and in doing so, the Outfitter Policy Act encourages career-oriented outfitters, rather than businesses or outfitters with a short-term perspective. We think that is in the public interest and in the interest of the resources as well.

Some of the provisions that provide this long-term perspective are the opportunity to earn renewal of the permit. I want to stress that's earned, and not guaranteed. Authorization of a permit for a term of up to ten years and transfer of the permit with the sale of the business is subject to approval of the agency.

Of equal importance, the bill provides the agencies with the authority to revoke permits for any significant reason that requires due process, and that is a very important component of the bill.

While the agencies have taken steps administratively to improve their management of outfitting and guiding, in the hierarchy of authorities, agencies often argue that policy is not legally binding. Just last year, for example, the Forest Service, attempted to revise their permit language, which included changes in their permitting policy.

These changes would have destabilized outfitter and guest range operations throughout the Nation. Their argument was that the Code of Federal Regulations trumped the outfitter and guide permitting policy, which had been in place since 1994.

The bottom line is that we have modern-day small businesses operating on public lands, with a tenuous regulatory authority, that is sometimes difficult to enforce in the field, and S. 1420 codifies this policy in a way that we believe is in the public interest.

Last, but not least, currently, outfitter permittees are facing four separate fee initiatives within the Forest Service: Fair market value for permits, road fees, fee demo, and cost recovery. We are not likely to survive the sum of these fees, in addition to the burden of local taxes, so we believe some stronger language is needed to forestall potential fee bidding for permits, or set a cap on the total fee burden.

This bill makes some good progress in that direction, but one concern we have is that the language may allow permit fees to vary from resource to resource.

Thank you for allowing me to testify on this important bill, and I look forward to answering any questions that you might have.

[The prepared statement of Mr. Brown follows:]

PREPARED STATEMENT OF DAVID L. BROWN, EXECUTIVE DIRECTOR, AMERICA OUTDOORS, KNOXVILLE, TN

Mr. Chairman and members of the committee, thank you for giving me the opportunity to testify on S. 1420, the Outfitter Policy Act. We very much appreciate the committee's attention to the issues addressed by this important legislation. As you know, this bill is important to the availability of high quality recreation and travel services to the public. It is also important to the rural economies in areas in and around federally-managed lands and waters, which are dependent on travel and tourism.

We offer our strong support for S. 1420. We are fully prepared to work with the committee and agencies to make reasonable modifications where necessary.

When I use the term outfitter and guide in this testimony, I am referring to those businesses, institutions, organizations and individuals who provide professional outdoor recreation services or outdoor educational experiences to the public for a fee and who are required to have an authorization from the federal agencies for that activity.

We believe an outfitter bill should further the partnership between permittees and federal agencies in a manner that serves the public's interest. Outfitters and guides make the backcountry, which comprises about 30% of our nation, available to those taxpaying citizens who do not have the equipment, skills or time to outfit their own trips. They provide healthy recreation and vacation opportunities that inspire, renew and revitalize Americans. They create important economic benefits to rural communities, and they teach important lessons about appropriate use and enjoyment of our natural heritage.

Why is a bill governing outfitting and guiding in national forests and on public lands necessary?

1. An outfitter bill should create consistent policies for the administration of outfitter and guide permits. These provisions should provide a reasonable assurance to the public that outfitter permittees will be qualified to provide the services they offer to the public. At the same time, the bill should provide for due process in permit administration. It should authorize the agency to reward quality operators and remove those who disregard the resource or public safety. S. 1420 does that by allowing the agencies to revoke permits for any significant reason, but requires the agency to follow due process.

2. There is no specific legislation that addresses the agencies' issuance and administration of outfitter and guide permits. Congress has established statutory standards for guides and outfitters operating in National Parks. In contrast, there is no comparable congressional guidance regarding the very same activities on Forest Service and BLM lands. These agencies issue far more outfitter permits than are issued in Parks. An outfitter bill would fill this gap, establish comparable policies on other federal lands, and benefit the public.

3. The administration of outfitter and guide permits is currently guided by agency policies, which are sometimes overlapping, ignored or ephemeral. For example, in 2003 the Forest Service drafted new permit language for outfitting and guiding, which was based, according to one agency permit manager, on a permit designed to authorize gas lines and similar developments. It contained strict liability provisions and called for setting fees through bidding for permits with a term of five years or less. No quality-oriented business providing visitor services can operate successfully under these terms and conditions. From time to time, there are also deviations from the policy in the field because agency personnel often do not believe the policy is legally binding.

4. Agency fee policies are overlapping and unpredictable. The Forest Service has four separate fee policies currently in play:

- fair market value for permit fees initiative;
- the recreation fee demonstration program;
- cost recovery fees for permit administration;
- and in some areas fees for accessing forest roads.

While the agency is making some progress in coordinating these fee policies, the total fee burden on permittees is still unpredictable because there is no legally binding policy to provide guidance to the field. Fee demo and road fees are in addition to permit fees and they are open-ended. For example, in March 2003, using the unfettered authority under the recreation fee demonstration program, a BLM employee

announced that the agency was quadrupling fees on the outfitted public visiting the Deschutes River in Oregon. Because prices had been set and reservations taken, outfitters were forced to absorb the additional costs. The Forest Service's official fee policy bases permit fees on revenues from services rendered outside forest boundaries if that service is packaged with services delivered in the forest. If a week-long trip spends one-half day in a national forest, the fee to the Forest Service is based on the price of the entire week long trip. Even with a discount for off Forest activities, the fee is disproportionately higher for that one-half day of activity included in a travel package, than the same activity offered by a permitted outfitter as a stand-alone activity.

These are among the reasons we believe an outfitter bill is necessary.

Comments About Specific Provision of S. 1420

We offer our sincere thanks to Senator Craig and members of the committee who have taken their time to craft this legislation. I will identify several elements of the bill that are essential to its success.

Sections 1–4 are appropriate and important provisions. I understand that some groups have a concern about the language in "Section 2 Purposes" that refers to the purpose of "establishing a program for permitting" that "facilitates an administrative framework and regulatory environment that makes it possible for outfitters to engage in a successful business venture." We believe this language is appropriate and does not put the welfare of the business over resource protection or other users because it applies only to the "administrative" and "regulatory framework", not the management decisions that determine the amount and types of outfitted activities. We understand that this language simply tells the agency to consider the financial impact on the permittee when administering fees and stipulating operating requirements. It, however, does not prevail over resource protection or the management plan.

We support a 10-year permit term, as it is the same term authorized by the 1998 Parks Concessions Act. As identified, "new outfitters" are probationary, including "new outfitters" who obtain a permit through a transfer after buying a business. We suggest a midterm review for 10-year permits to enable the agency and outfitters to review the utilization of the permit and to make modifications as may be appropriate.

Section 5 Fees. There are several important provisions in Section 5. The definition of ADJUSTED GROSS RECEIPTS resolves the issue of fees charged for off-Forest activities. "(b)" provides direction on "other fees" to prohibit them from "adversely" affecting the ability of the authorized outfitter to provide quality services at reasonable rates. We support the language that prohibits more than one charge for a user day to avoid the double billing that occurs when a trip crosses agency boundaries.

We believe bill has the potential to remove the current 3% of gross standard for permit fees in national forests and may result in a different fee from one Forest to the next. While the guidelines on fees are excellent, these guidelines are likely to be interpreted differently from region to region. Outfitters need a consolidated fee and consistent fee policy that clearly specifies the maximum fee burden for all fees and takes into account fees and taxes levied by local governments. This may be accommodated by authorizing a fee schedule, perhaps by type of activity, as a per day charge or as a percent of adjusted gross revenues. We strongly believe that 3% is an appropriate fee level for these seasonal operations, who are often paying local and state taxes.

We believe language in the bill should expressly prohibit fee bidding as method for issuing permits or determining fee amounts. Why? S. 1420 or a similar outfitter bill would authorize a permit, not a contract. A contract provides specific compensable rights that are not available in a permit. Furthermore, even NPS concessions law for outfitters makes fees subordinate to resource protection, experience and quality service and it has provisions that require the same fee for all permittees offering the same or similar service in an area.

An additional concern on fees is in the section on "Processing Fees and Costs, which provides for cost recovery for "monitoring". Monitoring costs should be covered by the permit fee and should not be an additional charge. This is consistent with existing agency direction on cost recovery.

Section 6. Liability and Indemnification. We generally concur with the language in Section 6. The cost of liability insurance has quadrupled in recent years, irrespective of claims. This increased cost is threatening the viability of some seasonal operations. Insurance has also become increasingly difficult to obtain for specialty markets, like outfitting and guiding, where the premium volume is relatively low. Therefore, the language in the bill, allowing waivers for claims resulting from the inherent risks of outdoor recreation, is crucial. However, the provision in (2) that

gives the agencies the discretion to eliminate waivers seems to contradict the intent of the section.

Sections 7, 8, 9, 10. We generally support the intent and language in these sections of the bill. Allocation of use is defined as a type of use, an amount of use or an area of operation. Therefore, the bill does not require a specific allocation of use where use has not been allocated. Section 7 also allows the agency to adjust use associated with the permit during the term that result

- from changes in resource management plans, or
- requirements under other laws, provided the agency documents the need for those changes.

We also believe that the agency can include conditions in the permit that require performance on the permit and the use associated with it. Permitted use may be subject to adjustment during the mid-term review for non performance. However, the permittee should not be punished for economic disruption, natural disasters or difficulties created by the agencies' own actions.

It is also important to note that a "new outfitter" who receives a permit as the result of a transfer has to be qualified by the agency and is subject to a "probationary period" of two years.

We applaud the performance evaluation procedures, the due process described by the bill, and the "earned" renewal provisions under Section 8. Permit renewal is earned, not guaranteed. When the outfitter meets the conditions prescribed by the agency in the permit, the permit is renewed. If the permittee is not judged to by "good" over the term, they lose their option to renew. This language will encourage motivated, career minded individuals to put all their energies into serving the public and caring for the resource.

Sections 13–16. We support the language in Section 13, which allows the agencies to retain the fees from permitted activities provided some language limits the total fee burden.

Section 17. We also recognize and support the language in Section 17, which establishes that the bill does not create a property right for the permitted outfitter.

The language that exempts "activities" for academic credit may need some additional work. We understand the intent. However, we have recently learned that some outdoor skills training offered to students by "accredited" outdoor educators are also provided to the general consumer outside of any degree program. Since these courses are also approved for academic credit, students in pursuit of academic degrees participate side by side with general consumers. Yet, the language may exempt the "accredited academic institution" from regulation and fees for all users, consumers and students.

Thank you again for considering my testimony. I urge you to pass this important legislation in this session of Congress.

Senator CRAIG. David, thank you very much.

Now, let me move to Todd Davidson, chairman of the Western States Tourism Policy Council. Welcome.

STATEMENT OF TODD DAVIDSON, EXECUTIVE DIRECTOR OF THE OREGON TOURISM COMMISSION, AND CHAIR, WESTERN STATES TOURISM POLICY COUNCIL, SALEM, OR

Mr. DAVIDSON. Thank you, Mr. Chairman, members of the committee. For the record, my name is Todd Davidson, executive director of the Oregon Tourism Commission, and chair of the Western States Tourism Policy Council. I am grateful for the opportunity to testify today on S. 1420, the Outfitter Policy Act, and I appreciate the committee's attention to the issues that are addressed by this important legislation.

The Western States Tourism Policy Council offers our strong support for S. 1420. The Western States Tourism Policy Council is a consortium of 13 Western State tourism offices, including Alaska, Arizona, California, Colorado, Idaho, Hawaii, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Since our establishment, the mission of the Western States Tourism Policy Council has remained to advance understanding and increase sup-

port for public policies that enhance the positive impact of travel and tourism on economies and environments of States and communities in the West. This is why I am before you today in support of S. 1420, the Outfitter Policy Act.

In the Western United States, our tourism product is heavily dependent upon public lands and waters. Natural beauty, recreation, outdoor adventure, scenic by-ways, and other activities and attractions tied to public resources are key components of what each of our respective States has to offer our domestic and international visitors.

The bottom line, as you noted, Mr. Chairman, is that many of our visitors dream of a great outdoor adventure in the West, but have little or no experience in actually running a river, or casting a fly, or climbing a rock cliff, or leading a horse backing trip. They want and are willing to pay for the assistance of a professional outfitter guide.

The members of the Western States Tourism Policy Council are marketing arms for their States' tourism industry. We are engaged in advertising, and special promotions, and media relations, publications, web sites, and a host of other advertising and marketing programs. Each of us is able to invite visitors to our respective States; yet, as State tourism offices, we are selling an image. We are creating opportunities for sales. In the end, it is the tour operators, the hotels, the attractions, the outfitter guides, and other private businesses in the tourism industry that close the sale, and provide the service.

These outfitter guide businesses provide recreation and vacation opportunities, create important economic benefits to rural communities, and provide an environmental ethic about appropriate and use and enjoyment of our natural heritage to visitors that are desiring a greater connection with their natural environment. Therefore, their stability as a business is crucial to the stability of the tourism economy in the West.

In short, S. 1420 seeks to stabilize the business environment of outfitter guides. I have a few thoughts in terms of the renewal provisions of the bill, and how it would affect the stability of outfitter guide businesses.

First, currently, all outfitters operate on special use permits that range from 1 to 5 years. As the permit term draws near the end, it is not uncommon for outfitting businesses to decide to forestall its capital expenditures such as new rafts and vehicles, or spending on guide training. This uncertainty undermines the quality of services to visitors to public lands. I know of an outfitter guide company that operates under five different Forest Service and BLM permits, all of which have different termination dates, so they are always operating in an environment of uncertainty.

Secondly, like many small businesses, their ability to grow depends on their ability to find some financing. Financial institutions look at many factors when determining to qualify a loan, and presently their ability to demonstrate that their permits are renewed as a matter of administrative policy has pacified lender uneasiness regarding business stability, but if policy changed whereby there would be little or no assurance of renewal, their ability to borrow would be significantly reduced.

Finally, introducing fee bidding into the permit renewal process would significantly change the industry as it is today. Fee bidding for permits would allow large corporations to buy out these rural-based businesses, using a lost leader budgeting process. As mentioned above, the uncertainty and instability of operating from one permit period to the next would only be exaggerated. The stability of outfitter guides is important to the long-term stability of the tourism industry in Oregon, and to every State in the West.

S. 1420, the Outfitter Policy Act, provides stability to outfitter businesses, so that they can provide the exemplary service, access to public lands, and protection and sustainability of public resources that we have all come to expect and to depend upon.

Thank you again for considering my testimony, and I urge you to pass this important piece of legislation this session. Thank you.

[The prepared statement of Mr. Davidson follows:]

PREPARED STATEMENT OF TODD DAVIDSON, EXECUTIVE DIRECTOR OF THE OREGON TOURISM COMMISSION, AND CHAIR, WESTERN STATES TOURISM POLICY COUNCIL, SALEM, OR

Mr. Chairman and members of the committee, thank you for giving me the opportunity to testify on S. 1420, the Outfitter Policy Act. I appreciate the committee's attention to the issues addressed by this important legislation. As you know, this bill is important to the availability of high quality recreation and travel services to the public. It is also important to the rural economies in areas in and around federally managed lands and waters, which are dependent on travel and tourism.

The Western States Tourism Policy Council offers our strong support for S. 1420. The Western States Tourism Policy Council (WSTPC) is a consortium of thirteen western state tourism offices, including Alaska, Arizona, California, Colorado, Idaho, Hawaii, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. Inspired by the 1995 White House Conference on Travel and Tourism, which urged greater regional attention to the interrelationships between Federal lands, the environment and tourism, eight western states in 1996 formed the WSTPC. Since its establishment, the mission of the WSTPC has remained: To advance understanding and increase support for public policies that enhance the positive impact of travel and tourism on the economies and environments of states and communities in the West.

In September 1997, a notable Memorandum of Understanding was signed between the then eight states of the WSTPC and nine Federal agencies, including the National Park Service, the Bureau of Land Management, the Bureau of Reclamation, the Fish & Wildlife Service, the Bureau of Indian Affairs, the USDA Forest Service, the U.S. Army Corps of Engineers, the Environmental Protection Agency and the Federal Highway Administration. The signatories pledged to share information and provide mutual support and cooperation on common programs and projects. So successful was the MOU that it was renewed and expanded in November 2001, between now eleven western states and two additional Federal agencies, the Department of Commerce Office of Travel and Tourism Industries and the USDA Natural Resources Conservation Service. At least two or three times each year, the WSTPC and its Federal partners hold joint meetings to discuss issues and concerns and to plan projects, especially regional intergovernmental conferences.

The WSTPC has always had as its primary mission supporting public policies that enable travel and tourism to have a more positive impact in the West. The WSTPC strategy has been to identify emerging issues and determine their likely impact on western tourism, to work with allies and friends in the industry and in Congress and government agencies and to communicate its views and positions to policy-makers.

This is why I am before you today in support of S. 1420, the Outfitter Policy Act.

In the western United States, our tourism product is heavily dependent on public lands and waters. Natural beauty, recreation, outdoor adventure, scenic byways and other activities and attractions tied to public resources are key components of what each of our respective state's has to offer our domestic and international visitors.

In Oregon, for example, nearly 50% of primary and secondary travel markets see Oregon as an exciting place to visit, a great place for a family vacation and offers great sightseeing opportunities. These are three of the most important travel

motivators in generating interest to visit a destination. Furthermore, nearly 60% of our potential visitors see Oregon as a destination that offers great recreation activities, 72% feel Oregon has great state and national parks, and 75% feel Oregon has truly beautiful scenery.

In terms of recreational pursuits, the residents of our target markets tell us that Oregon offers specific activities that interest them:

71% say we offer great fishing
66% feel we offer great river rafting
57% say we are great for kayaking
68% say we offer great backpacking

And, while there are numerous others mentioned in the research, the fact is that many of our visitors dream of great outdoor adventures in Oregon but have little or no experience in actually running a river, casting a fly, or climbing a rock cliff. They want and are willing to pay for the assistance of a professional outfitter guide.

The member states' tourism offices of the Western States Tourism Policy Council are marketing arms for their state's tourism industry engaged in advertising, special promotions, media relations and publications, websites and a host of other advertising and marketing programs. Each of us is able to invite visitors to our respective states, but we are selling an image. In the end, it is the tour operators, hotels, attractions, outfitter guides and other small businesses in the tourism industry that close the sale and provide the service. Their stability as a business is crucial to our state's economic stability.

Furthermore, we believe this bill will further the partnership between permittees and federal agencies in a manner that serves the public's interest. As noted above, outfitters and guides make the backcountry, which comprises nearly 50% of the western lands of our nation, available to those citizens who do not have the equipment, skills or time to outfit their own trips. They provide recreation and vacation opportunities, create important economic benefits to rural communities, and they provide the environmental ethic about appropriate use and enjoyment of our natural heritage to visitors desiring a greater connection with their natural environment.

In short, this S. 1420 seeks to stabilize the business environment of outfitters who utilize our nation's public lands and waterways. I have listed below a few thoughts in terms of the renewal provision of the bill and how it would affect the outfitter guide business.

Currently, all outfitters operate on Special Use Permits ranging from 1 year to 5 years. As the permit terms draw near it is not uncommon for outfitting businesses to forestall capital expenditures such as new rafts, vehicles, life jackets and safety equipment as well as spending on guide training, management, continuing education, etc. The uncertainty of renewal weighs on many of their management decisions; in fact, I have been told that it is the greatest concern as they consider whether to continue to invest in their outfitting business. This uncertainty undermines the quality of services to visitors to public lands. A reasonable and fair renewal process removes that uncertainty and provides a regulatory scheme that will protect the public's interests. I know of an outfitter guide company that operates under five different Forest Service and BLM permits, all of which have different termination dates. In short, they are always operating in an environment of uncertainty.

Like many small businesses their ability to grow depends on their ability to borrow money. Financial institutions look at many factors when determining to qualify a loan. Presently, their ability to demonstrate that our permits will be renewed as a matter of administrative policy has pacified the lender uneasiness regarding business stability. It is not the best situation, but in most cases they have been able to pass their muster. If policy changed whereby there would be less, or no, assurance of renewal, their ability to borrow would be wiped out.

Introducing Fee Bidding into the Permit renewal process would significantly change the industry as it is today. Fee bidding for permits would allow large corporations to buy up our rural based businesses using lost leader budgeting. Some major corporations have indicated a preliminary interest in this and have begun to look at adventure-based businesses to augment their timeshare products, offering adventure as part of the "vacation club" concept. As mentioned above, the uncertainty and instability of operating from one permit period to the next would be further exaggerated if permits were put up for auction at the end of each permit term. A further degradation of outfitted services would inevitably result.

The stability of outfitter guides is important to the long-term stability of the tourism industry in Oregon and each of the western states. S. 1420, the Outfitter Policy Act, provides stability to outfitter businesses so that they can provide the exemplary

service, access to public lands, and protection of public resources that we have all come to expect and depend upon.

Thank you again for considering my testimony. I urge you to pass this important legislation in this session of Congress.

Senator CRAIG. Todd, thank you very much.

Now, let us turn to Dave Simon, director of outdoor activities for the Sierra Club. Welcome to the committee.

STATEMENT OF DAVE SIMON, DIRECTOR OF OUTDOOR ACTIVITIES, SIERRA CLUB, SAN FRANCISCO, CA

Mr. SIMON. Thank you, Mr. Chairman. Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify on behalf of the Sierra Club's 700,000 members in support of outfitter reforms, but in opposition to the Outfitter Policy Act in its present form.

The Sierra Club acknowledges the valuable services that outfitters provide in enabling a segment of the public to use and enjoy our public lands, and that many outfitters have a commitment to protect natural resources. The Sierra Club has a long history of collaboration with outfitters in protecting our natural heritage for the current and future enjoyment of all Americans.

The Sierra Club also runs its own outdoor activity program, with the mission of taking people into the outdoors to inspire them to protect the natural world. In running this program, we experience firsthand many of the same issues encountered by the outfitters when working with land agencies, and we believe that legislation can be drafted that effectively addresses the very real concerns of the outfitter community.

As was introduced, S. 1420 does address some real problems, but does not appropriately balance the needs of the land, the public, the land agencies, and the outfitters. The bill would burden land managers with providing commercial outfitters a reasonable opportunity to engage in successful business. The bill would elevate commercial outfitter permits to a legal status greater than other kinds of Federal permits, by loosening restrictions on permit sale and transfer, and by restricting the ability of land managers to modify permits.

In areas of high recreational demand, where that requires restrictions on public access, the bill would compel land managers to provide a disproportionate share of scarce public resources to outfitters based on the bill's renewal and successful business provisions.

Despite these problems with the bill as introduced, the Sierra Club appreciates and supports your efforts, Mr. Chairman, and those of the outfitters, to find common ground, particularly efforts to streamline and standardize the permitting process, provide adequate permit award and change notification, simplify fees and prohibit fee bidding, award permits of sufficient duration to obtain loans and recover investments, allow selective control transfer of permits, and renew permits based on performance.

However, when you and the subcommittee address these problems faced by commercial outfitters, it will also be necessary to address the problems faced by non-profit institutional groups, and not exacerbate the problems that those groups currently face. It is im-

portant that when private profit-making interests are balanced with the greater interests of the public and the land itself that non-profit users not be inadvertently or disproportionately penalized.

Non-profit institutional groups include such diverse organizations as the Boy and Girl Scouts, church and school outdoor programs. Currently, activities of such non-profit groups are sometimes classified as commercial, and other times as non-commercial. When a non-profit group's activity is classified as commercial, it is sometimes to obtain the required commercial permits due to factors: One, the land agency's understandable desire to minimize the number of outfitters managed, and two, visitor use restrictions in popular areas that generally lead to the assignment of all commercial visitor use to establish commercial outfitters.

This problem can be fixed in ways that provide fair access to all users of our public lands. One approach is to maintain the current land agency classification of commercial and non-commercial use, as well as the current land agency recognition that some commercial use is occasional, and set aside a minimal fixed portion of commercial use for such occasionally commercial use by non-profit institutional groups. Doing so would enable all three user groups, the public, commercial outfitters, and institutional groups, to have access to public lands.

It is important to note that the Sierra Club is not looking for preference. In most cases, non-profit institutional groups do not compete for commercial recreational users. For example, essentially all Sierra Club for which fees are charged are open only to Sierra Club members, and the Sierra Club hires commercial outfitters to run all of our raft and pack trips. For the most part, institutional groups conduct far fewer trips, and have far fewer participants, and include educational and civic activities that are generally not offered by commercial outfitters.

While a group like the Sierra Club operates fewer trips than average than the average outfitter in any particular area, the Sierra Club operates more trips in more places, and has more commercial permits than perhaps any other outfitter covered by this bill. The Sierra Club and other groups have the competence to guide their own trips, and provide an experience that is not otherwise available. They should not be denied access to public lands.

In closing, the Sierra Club has had extensive discussions with outfitters, particularly David Brown, of America Outdoors, and found that there is much common ground, with ample opportunity to find acceptable compromise. The Sierra Club would like to work with outfitters and land agencies that sponsor this bill to draft legislation or regulations that address the very real problems confronting outfitters, and their provision of valuable services to the public.

Thank you for the opportunity to convey the views of the Sierra Club, and we look forward to working with you, Mr. Chairman, and the subcommittee, as it further considers S. 1420. Thank you.

[The prepared statement of Mr. Simon follows:]

PREPARED STATEMENT OF DAVE SIMON, DIRECTOR OF OUTDOOR ACTIVITIES, SIERRA CLUB, SAN FRANCISCO, CA

Mr. Chairman and members of the Subcommittee, my name is Dave Simon and I am the Sierra Club's Director of Outdoor Activities. Thank you for the opportunity

to testify on behalf of the Sierra Club's 700,000 members in support of outfitter reforms but in opposition to S. 1420, the Outfitter Policy Act, in its present form.

The Sierra Club acknowledges the valuable services that outfitters provide in enabling a segment of the public to use and enjoy our public lands, and that many outfitters have a commitment to protect natural resources. The Sierra Club has a long history of collaboration with outfitters in protecting our natural heritage for the current and future enjoyment of all Americans. The Sierra Club also runs its own outdoor activity program with the mission of taking people into the outdoors to inspire them to protect the natural world. In running this program, the Sierra Club encounters first-hand many of the same issues encountered by outfitters when working with land agencies, and we believe that legislation can be drafted that effectively addresses the very real concerns of the outfitter community.

As it was introduced, S. 1420 does address some real problems, but does not appropriately balance the needs of the land, the public, the land agencies, and the outfitters.

- The bill would burden land managers with providing commercial outfitters a "reasonable opportunity to engage in a successful business." The Sierra Club recognizes that there are land agency practices that affect an outfitter's ability to operate a viable business that should be made more effective and efficient. However, land management decisions should not be based on business conditions as this grants outfitters a unique commercial claim to federal lands and greater power over public land use than the public has.
- The bill would elevate commercial outfitter permits to a legal status greater than other types of federal permits by loosening restrictions on permit sale and transfer, and by restricting the ability of land managers to modify permits. However, permit issuance, renewal and transfer are discretionary acts of the land management agency and they should be based solely on the interests of the public and on the land agency's goals.
- In areas where high recreational demand requires restrictions on public access, the bill would compel land managers to provide a disproportionate share of scarce public resources to outfitters based on the bill's renewal and "successful business" provisions. This would limit the ability of land managers to take appropriate action to protect the public resource and serve the public interest.

Despite these problems with the bill as introduced, the Sierra Club appreciates and supports your efforts, Mr. Chairman, and those of the outfitters to find common ground—particularly efforts to:

- streamline and standardize the permitting process
- provide adequate permit award and change notification
- simplify fees and prohibit fee bidding
- award permits of sufficient duration to obtain loans and recover investments
- allow selective, controlled transfer of permits, and
- renew permits based on performance

However, when you and the Subcommittee address these problems faced by commercial outfitters, it will also be necessary to address problems faced by non-profit institutional groups, and not exacerbate the problems that these groups face. It is important that when private, profit-making interests are balanced with the greater interests of the public and the land itself, that non-profit users not be inadvertently or disproportionately penalized.

Non-profit institutional groups include such diverse organizations as the Boy and Girl Scouts, and church and school outdoor programs. Currently, activities of such non-profit groups are sometimes classified as commercial and other times as non-commercial. When a non-profit group's activity is classified as commercial, it is sometimes impossible to obtain the required commercial permits due to two factors: 1) the land agency's understandable desire to minimize the number of outfitters managed, and 2) visitor use restrictions in popular areas that generally lead to the assignment of all commercial visitor use to established commercial outfitters.

This problem can be fixed in ways that provide fair access to all users of our public lands. One approach is to maintain the current land agency classification of commercial and non-commercial use as well as the current land agency recognition that some commercial use is "occasional"—and set aside a minimal fixed portion of commercial use for such "occasional" commercial use by non-profit institutional groups. Doing so would enable all three user groups—the public, commercial outfitters, and institutional groups to have access to public lands, and that established commercial users would not have a monopoly on commercial use.

It is important to note that the Sierra Club is not looking for preference. In most cases, non-profit institutional groups and commercial outfitters do not compete for

commercial recreation users. For example, essentially all Sierra Club outings on which fees are charged are open only to Sierra Club members. And, the Sierra Club hires commercial outfitters to run all of our raft and pack trips.

For the most part, institutional groups conduct far fewer trips, have far fewer participants and include educational and civic activities that are generally not offered by commercial outfitters. And while a group like the Sierra Club operates fewer trips than an average outfitter in any particular location, the Sierra Club operates more trips in more places and has more commercial permits than perhaps any other outfitter covered by this bill. Institutional groups such as the Sierra Club still compete for wilderness permits and still conduct their trips in accordance with land management plans and regulations. The Sierra Club accepts all of the costs and responsibilities that come with being an outfitter. The Sierra Club and other groups have the competence to guide their own trips and provide an experience not otherwise available—they should not be denied access to public lands.

It is also worth noting that despite the perception of some, the Sierra Club does not generate a surplus from its outdoor activities that it uses to subsidize other programs. Many outings are free and others are priced with the goal of recovering costs to the extent possible—so this vital educational program is not a drain on other Club activities or resources.

The Sierra Club has had extensive discussions with outfitters, particularly David Brown of America Outdoors, and has found there is much common ground and ample opportunity to find acceptable compromise. The Sierra Club would like to work with outfitters, land agencies, and the sponsors of this bill to draft legislation or regulations that address the very real problems confronting outfitters in their provision of valuable services to the public.

Thank you for the opportunity to convey the views of the Sierra Club and we look forward to working with you, Mr. Chairman, and the Subcommittee as it further considers S. 1420.

NOTE: The following attachments have been retained in subcommittee files:
I—Detailed Analysis of the Outfitter Policy Act of 2003; II—Use and User Category Clarification and Usage Allocation; and III—Sierra Club Outdoor Activities Program

Senator CRAIG. Dave, thank you for that constructive testimony.

We are looking forward to working with all parties involved here to see if we cannot get what is stable public policy in this area.

Before I offer questions, I only offer one additional observation. I grew up in small farming, ranching and logging communities, Cambridge, Idaho, and Midvale, Idaho. One community is about 150 folks. The other community is about 2,530, and they really have not grown all that much since the fifties and the sixties. They are on the edge of the Hell's Canyon National Recreation area, they are on the edge of the Payette National Forest, and across the river from the Wallowa country, in Oregon, a beautiful country.

There were saw mills in both of those little communities. Those saw mills are now gone. Something that has replaced them are probably at least five or six outfitters, who now have storefront operations, hire between 25 to 30 people, and have become members of the community. Their businesses are offered out of those communities. Their kids go to school there. They bring main street traffic. They really have become main street economy in my State, and across the West, especially near the public lands, and clearly, it is in that recognition of trying to create both stability and opportunity that this legislation comes forward, because, certainly, the West has changed a good deal over the last 30 to 40 years, and will always be changing, but one of the things that is apparently growing quite rapidly today, with good stability and service provided, is the outfitting and guiding services for all the reasons that many of you have just expressed.

Dave, in your testimony, you have suggested we include provisions giving the Forest Service and the BLM authority to issue a single permit, where appropriate. Are there any other situations where the two agencies jointly issue a permit, and can you be more specific about how this might work?

Mr. TENNY. As you know, Mr. Chairman, the agencies try to align much of the work they do together, especially through the Service First Authority. The intent here, especially with respect to this legislation, and the administration of permits for outfitters and guides, is to more fully align not only the intent of working together, but some of the authorities as well. The agencies do have differing authorities that relate to such things as law enforcement, or the way they use receipts. It might be a very useful thing, and, in fact, we would consider it a very constructive thing to take a very close look at the two authorities of the respective agencies, and see if we can align them in a way that will enable us to operate in a more seamless fashion.

I hope that answers your question, but there are lots of ways that we work together outside of this particular realm, but we certainly would like to be able to work even more consistently in this area, especially in those circumstances where the two agencies have contiguous land, and we have operations that will move frequently from one to the other, and we would like that to happen without unnecessary interruption or complexity.

Senator CRAIG. Jim, do you wish to make any comment on that question?

Mr. HUGHES. Yes. The BLM agrees with the Forest Service on this. In some areas, we are doing it at the local level, based on MOUs, especially on a number of rivers. I know that on the Rogue River, in Oregon, we manage commercial activities for both the Forest Service and BLM, under an MOU, and I think the South Fork Payette River, in Idaho, we have an arrangement there, where we get together, and the user fees stay out there.

The Forest Service, BLM, and recreationists sit down together, and decide where best to use that money. So I think there are obviously plenty of opportunities to do this, and we have some examples that, as I say, we have done out there with MOUs in certain areas, and we just can expand it, and maybe formalize it a little bit more.

Senator CRAIG. The BLM collects what, $3 million a year in revenues, the Forest Service, $4 million a year. If we authorize single permits for guides whose activities cross, as you have mentioned, jurisdictional lines, BLM and Forest Service boundaries, how might we share the fees?

Mr. TENNY. Well, obviously, the best outcome would be for the Department of Agriculture to collect all the fees, and then make the determination from there.

Senator CRAIG. I thought you might say that, Dave.

Mr. TENNY. This is not altogether different than the way we have approached other areas; for example, the way we are approaching fuels treatment, and our authorities, and our approaches there, and especially under the Healthy Forest Restoration Act, where we have some authority to treat a certain number of acres. I think the answer to the question is that we will simply have to work that

out, and I am fully confident that we can do that, because we have demonstrated that we have been able to do that elsewhere.

I think that the fact that the Department of the Interior and the Department of Agriculture, especially in the land management agency area, have become so much more aligned and complementary in the way that they do their business, this is one where we are confident that we can determine what is most equitable. It is certainly an area where we will probably need to dig in a little bit more deeply, and look at the nuances, but certainly, at the outset, we feel confident that we can make that distribution equitable.

Senator CRAIG. And if you cannot, we will.

Mr. TENNY. Of course.

Senator CRAIG. I have a feeling appropriators might do something like that, or authorizing committees.

Jim, you indicated the Department has already begun to adopt some of the elements of the bill administratively. What prompted making these changes, and what value is there for the Department in having, let us say, a legislative national policy versus regulation?

Mr. HUGHES. I think two things. As you well know, recreation needs have grown on public lands in the past decade tremendously. So first of all, we are running this program without much legislative guidance, quite frankly, and with very little legislative history on this type of activity. So I think this bill for the BLM, is about the future, as recreation needs grow.

We have come across problems, issues, I think Dave mentioned some of them in his testimony about what is an educational group versus a commercial outfitter. In some cases, our managers on the ground have had to deal with this without much guidance from us, quite frankly.

We have done public opinion surveys with outfitters over the years, to try and get user satisfaction. Those numbers are starting to go up. They need to go up more. We are concerned about the service we deliver, and we want to help the outfitters deliver the best service possible, and I think this bill will help us get there.

Senator CRAIG. Okay. Thank you. Well, we are going to be looking probably at some adjustments, changes, and some substitute language, so certainly, we will encourage both agencies, as we offer up this language, to be quick in turn-around, so that we might have the opportunity, if we can get to where we hope we can in a bipartisan way, to deal with this this year.

I made the mistake of saying "Dave," and watching three heads move. David. I will be clearer this time. Again, let me thank America Outdoors for their testimony. I think it is clear that members of the Outfitter community have the most to lose or gain, depending on how this legislation ultimately reads. As you know, this legislation has been debated for many years. We have had variances all over the place, some on a forest-by-forest basis, others on an area-by-area basis. What kind of impact has the lack of guidance had on the industry itself?

Mr. BROWN. Well, I have been doing this now for 23 years or so, and periodically, we get these changes that come at the Washington level that threaten to destabilize the industry, and that obviously retards investment.

The second is in the field, especially with the policy. We do see inconsistency in the administration of permits. We have had—I want to say that 75 percent of the relationships are good, but in our business, we end up dealing with the 25 percent of the problems, and there is that potential for that to increase, unless there is legislation. We do have people who operate, who will have a manager come in one day, and say, even despite their good record, and their use of the permit, that they are trying to cut their use in half, with no justification, no documentation.

So those are the kinds of problems that the bill deals with in providing due process, and requiring a public comment, if use levels for outfitters versus other segments of the user population are changed.

Senator CRAIG. How would your members react to a simplified single joint permit, the kind that we just visited, where you cross administrative jurisdictions?

Mr. BROWN. I think that is a great idea. What we are finding now is that NEPA is required for every permit issuance, and so if you are running a trip that goes from Forest Service to BLM, one agency is very often unable to issue the permit until they do an NEPA compliance, and that can take quite a long time. I have a guest range in Oregon, as a matter of fact, that is having that problem right now.

Senator CRAIG. I will come back with a couple of more questions, but let me turn to my colleague, Senator Craig Thomas, for any questions.

Senator THOMAS. Thank you, Mr. Chairman. I do not know that I have any questions. I was much interested in what the panel had to say. As you know, we worked with this in 1998, with our Parks bill, and as a matter of fact, have a plan in there that is very similar, I think, to what is being done here, and I think it is a good idea. Outfitting is unique. It is different than most of the other types of agreements we have to make. So it makes sense to have a policy on it.

You were talking about where you grew up. I grew up right outside of Yellowstone and Shoshone National Forest. I think four of our neighbors were all outfitters, and still are. In that instance, it is the Park and the Forest Services, where they are used jointly.

So I think it is a good idea to do this. I have been, and will again be a sponsor of this bill. I think we need to have some standards, and lay them down out there. So I really do not have any questions. I just hope we can move forward with it. Thank you.

Senator CRAIG. Thank you very much, Craig.

Then let me get back to some questioning here. Let me ask this of you, David Brown, and let me ask this of you, Dave Simon. You have had an opportunity to look at the legislation in its current state. We have an affirmative piece of testimony on the part of David Brown. We have some testimony with caution in it on the part of Dave Simon. Are there any proposals within this legislation that truly give folks heartburn, in the sense of, let us start with you, David, as it relates to the industry itself, and some adjustments that they would like to see specifically made?

Mr. BROWN. I do not think there is anything that really gives us heartburn in the bill. There are some elements of it that we think,

especially on the fee language, that deserve some clarification, but we have worked on this thing now for almost 7 or 8 years, and pretty much massaged it. So the fee language, we are in an evolving process with fees, with the agencies. One of the problems we have is that they are very often in—some of the agencies run out of different offices, and we talked about cost recovery, they want to send us to OMB, and we talked about other issues. We run into different elements of the agencies. So it is hard to get an idea of what the total fee burden is going to be in the long run, and I think that we need some language in that area that will limit the total fee burden.

With regard to the successful business venture language, that is really part of what the intent is there, to preclude fees from being so high that they marginalize the business, and the public is just not well served by marginal operation.

Senator CRAIG. Dave, your comments.

Mr. SIMON. Senator, I think there are some general issues with the construct of the bill that makes strong use of the double negative, which the way it is worded, it says, "Shall not be inconsistent with," as opposed to just saying, "Shall be consistent with land management policies," and things like that. So we think there is language that can be cleaned up, and we think that is more than just a token concern. We think that is a significant concern.

As far as the other issues, we have some concerns about the vagueness of the probationary process, that appears to us to be weaker than the current regulations. We have some concerns about fees.

Another is the allocation of use. It has to do with the successful business venture proposition, which, in the context of fees we understand do not oppose that, but it is also in the purpose of the bill. In the purpose of the bill, having the mandate to provide for a successful business venture for an outfitter then starts getting into land use decisions, and how use is allocated, and where there needs to discontinue use in a certain area, because that is what the land dictates, that we are concerned that the land managers will not have the flexibility because of that provision to reduce the allocation for particular outfitters.

In addition, we also think that the institutional groups will get marginalized, and we will find ourselves without the ability to access public lands. We currently find that in certain situations. There is any number of land agency districts that that occurs now, and we think that that is only going to increase in the future with this legislation, as it is currently written; however, we think there are some very straightforward, acceptable ways to amend the legislation that will be very palatable to the outfitter community, that would address our concerns.

Senator CRAIG. Well, I have to compliment you. This is the most constructive the Sierra Club has been to date on this particular issue, and I say that in all sincerity, and I appreciate it.

In your testimony, you have described the objective in the bill of providing outfitters a reasonable opportunity to engage in a successful business would be a burden on land managers. Can you see a better way to address the legitimate need for a stable business environment without it becoming a burden on an agency?

Mr. SIMON. I think by mandating certain consistencies and process will go a long way for the outfitters community, so they will know what it will take to get permits, know the time frames for renewals, understand very clearly what the rules are for performance evaluation.

Fees are not a big issue for us. In discussions with David Brown, I know fees are a very big issue for the commercial outfitters. Clearly, the successful business venture can be applied to fees, in terms of capping fees in some manner or form, so that outfitters are not burdened with extensive fees. However, that is not really our issue. We have to pay fees like others, and we pay them.

Senator CRAIG. Mr. Tenny, maybe you wish to add any additional comments to Mr. Simon's comments.

Mr. TENNY. Well, maybe I would just add that certainly I hear a lot of congruity on the part of these two gentlemen in some respects. We are not interested in creating a situation that is going to be unfair, by way of fees, for example, or by way of consistency in the way we administer permits. So I think that—it sounds to me like there is opportunity for lots of agreement here. It sounds like there are discussions ahead, in terms of how that agreement might be a fashion, but certainly, we would be quite willing to help in any way we can to reach that point.

Senator CRAIG. Mr. Davidson, tourism is one of the fastest growing industries in most of our Western States. What can you tell us about the current trend of tourism, and its impact on local communities, as you see it?

Mr. DAVIDSON. Mr. Chairman, it is a very astute observation that tourism is, indeed, one of the fastest growing industries in the country, not only in the West. If nothing else was brought to light during 2001, with the recession, that was exacerbated by the terrorist attacks of 9/11, it was how much the Nation's economy had come to depend on the tourism industry.

In fact, the visitor industry employment in the country represents about 6 percent of the Nation's employment, but 24 percent of the job losses in the Nation, as a result of that recession and the terrorist attacks, resulted in the tourism industry. So the impacts have been felt very broadly.

I can tell you that tourism continues to grow to the point that it is now either the largest, or certainly one of the top three largest industries in each of the member States, or the Western States Tourism Policy Council. Our visitors are telling us that they see our States offering great recreation activities, have great State and national parks, have truly beautiful scenery, and that is the impetus for travel to the West.

They may engage in a variety of other activities there that involve tribal tourism, and heritage tourism, and the like, but it is that incredible natural beauty that drives them to our Western States, and at that point, the impact on the world communities is paramount, because those are the communities that serve as gateways, those are the communities that are serving visitors as they enter the public lands, and provide them the services that they need. So as tourism continues to grow, the role of tourism impacting those rural economies will only continue to grow.

Senator CRAIG. Todd, I oftentimes call outfitting and guiding value-added tourism, because it causes more money to be spent in a given location, and it brings economic stabilities to the locations where it is spent. You spoke a lot about stability in your testimony. Can you give us some examples? You have already spoke, of course, about the environment, post-9/11, but can you give us some examples about how the instability of the current system might affect, or has affected tourism?

Mr. DAVIDSON. Some of the comments, Mr. Chairman, have been addressed by fellow members of the panel, as they talked about some steps that have already been taken to help address stability or instability issues. For example, the Rogue River was one of the first places in the country to do a dual permit. That is, you float from Forest Service, under BLM, or actually, the river goes the other way. I think it flowed from BLM onto Forest Service land. There is a common permit now to help you access that, but the—those are maybe few and far between. They are great examples of best practices, but the need for a national policy still exists.

As you mentioned, the value-added component that outfitter guides bring to our economy is incredibly important to us. We do what we can to encourage visitors to come and stay longer, and spend more dollars, while they are in our respective States. Outfitter guides afford us that kind of opportunity, because they allow folks access to some trips that they would not otherwise be able to take on on their own.

Instability within the outfitter guide community only leaves them with a more tenuous business decision, and us with that shakier infrastructure at the front line, for us to be able to better serve our visitors.

Senator CRAIG. Probably to you David, Jim, and Dave, that's Brown, Hughes, and Tenny, Mr. Simon has mentioned the recognizing of occasional commercial use. React to that for me, if you would, in the context of what we are attempting to do here. I do not dispute his testimony, or the value of what he has proposed. What are your reactions to his comments in relation to the term, "Occasional commercial use"?

Mr. BROWN. Well, the bill provides for temporary permits. I think what Dave is talking about are groups that would like to get temporary permits that somehow are not able to access them. Let me say this. Of our top six members, the biggest ones, two of them are non-profits, so non-profits are already some of the most prominent users on public lands under the existing permitting system. In fact, the regional director of concessions in the Forest Service, Northwest, tells me they are the biggest single type of use in the Northwest.

But I understand what Dave is saying, and where he is coming from. Outfitters are a little bit like the airlines. It is impossible to book at a hundred percent. There are cancellations, or disruptions, so the resources, even if—it's rare to have a hundred percent of the outfitted use utilized. So I think there is capacity there for temporary permits to be issued to groups. I would say that that might be done in a way that contributes to diversity of the users, but not specify specifically for non-profits, because I think you would have an exclusive use category for non-profits in one area, and then they

are also participating in the existing permit authority. So I think to do that, to encourage a diversity of use is a good idea, but to do it in such a way that a for-profit or non-profit could do it.

Quickly, one other thing. I think under that system, one concern we have is that when non-profits or for-profits are providing a same or similar service at the resource, that they do so under the same fees and conditions.

Senator CRAIG. Jim.

Mr. HUGHES. Mr. Chairman, this is an issue that Mr. Simon brought up regarding some of the definitions we wanted to talk to the committee about. We do not want a group of Boy Scouts and Girl Scouts to be suddenly categorized as outfitters. There are other conditions that we deal with in the field, on which our managers have to make a decision. For example, a trip that someone is organizing under the auspices of an educational unit, and whose purpose is, in theory, educational, really more recreational? So those are issues, I think, that our managers are trying to deal with on the ground, on a day-to-day basis, and some guidance, I think, would be very helpful to us out there in the field.

Senator CRAIG. Dave, any comment?

Mr. TENNY. Yes. One thing that I think is important to realize, with respect to the Forest Service permits, the occasional use concept I think can apply both to those organizations, or those outfitters and guides that are commercial in nature, and those that are not. If you look at the vast majority of the permitees that use Forest Service lands, they are grossing annually less than $50,000. That is not a large sum of money, by any standard.

In fact, most of them are grossing less than $10,000, I think, based on our most recent information. So their use is generally very much falling within this notion of occasional use, and I think we want to make sure that everybody is in the tent here, both those that are able to accommodate larger parties, those that are able to accommodate small parties, those who are out on the land more often during the year, and those that are on the land less often.

I do not think anyone's intent is to either exclude or treat unfairly any of the groups that want to use our Federal lands. In fact, I am very encouraged by the discussion here of access, because I think access is at the core of what we are talking about. We want to improve and increase access to these lands. I think that that is a very worthwhile policy objective.

I concur with the comments that Jim and David have made, and we certainly want to do everything we can to make the system fair and simple enough, so that we are not creating a complex web that will be difficult for any party to navigate, whether they are a profit or a non-profit, or whether they are large or small.

Senator CRAIG. Mr. Simon, are you being misunderstood here, or do you believe that is a reasonable evaluation of your concern?

Mr. SIMON. I think it is a reasonable evaluation. If I could say it a little differently. We currently have about 50 permits across the country, and most of those are in areas where we run one or two trips. There were half-a-dozen areas, actually, if you include National Parks, closer to ten areas, where we just were not able

to get the permits, because all of the commercial use was currently allocated to their designated outfitters.

That applies notably to the Sierra Club, because we have a name, people understand our program, land managers understand our program, but it really is true that under the regulations, as they are written, if the Boy Scouts charge a hundred bucks for a trip, where the out-of-pocket costs are seventy-five, that is commercial use, and presumably, they would not be able to go to the same ten areas that we could not go to either, if they got the same answer from the land manager.

The concern is very real. I understand David Brown saying perhaps we set aside this fixed minimal portion, and open that up to either commercial or non-commercial use. I do not have a fixed opinion on that. That seems like a way in which others could compete with the established outfitters. I am not sure the outfitters would like that, but the key is, if you have commercial use, which is how the land agencies view the use, they do not care whether it is a non-profit footstep, a for-profit footstep, it does not matter, it is whether it is commercial use or non-commercial use, and the idea of setting aside, keeping in reserve some portion of that commercial use for occasional users, strikes me as good public policy, in terms of opening up the access to our public lands, and keeping it open.

Senator CRAIG. Okay. Is there any further comment on this particular issue? Is there any additional comment that any one of you would like to make before we close this hearing? An opportunity for the last word, David.

Mr. BROWN. I do think this issue here is one of the critical issues, but I do think there is a way to solve it. Dave and I have worked together on this Park Service working group for commercial use authorizations, and we were able to, I think, reach a consensus on that issue. So I think we can probably solve this in a way that is in the best interest of the public, and helps the bill advance.

Senator CRAIG. If it is solvable, and I agree with you, it is, then your challenge is to do it in 10 days or less. No. Your challenge is to do it within reasonable time. Let me suggest to all of you that I think we do want to move this legislation this year, and we would like to move it sooner rather than later. I will continue to work with my colleague, Ron Wyden. We will work in a bipartisan way, to see if we can bring resolution to this, with all of you involved in it, so that when we get to a final draft, we have arrived at as much consensus as we can possibly get, with all of you fully in participation. We would appreciate that a great deal.

I guess my challenge to all of you is to please stay engaged with us and our staffs as we work to finalize this, so we can get a final draft, and move this through our committee.

I appreciate it a great deal. Thank you all for being here today. The subcommittee will stand adjourned.

[Whereupon, at 3:30 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

AMERICAN WHITEWATER,
Silver Spring, MD, March 3, 2004.

Hon. LARRY E. CRAIG,
Chairman, Subcommittee on Forests and Public Land Management, U.S. Senate, Washington, DC.

DEAR SENATOR CRAIG: Thank you for providing this opportunity to submit testimony to the Subcommittee on Forests and Public Land Management in regard to the Outfitter Policy Act of 2003 (S. 1420).

American Whitewater, a national 501.c.3 non-profit organization, appreciates the opportunity to describe our support for this legislation. As described below, our support is conditioned upon the ultimate inclusion of Sections 17 and 7.C.

Section 17 serves to protect the legacy and traditions of non-outfitted citizen use of America's public lands. Though outfitters play an important role in facilitating access to the outdoors, non-outfitted, independent citizen access is essential for preserving our national heritage, enhancing public health, supporting rural and gateway economies, and bolstering national sales of recreational products.

Section 7.C. ensures that agencies retain the authority to change outfitted allocation in response to management plan modifications and related changes to applicable laws. Inclusion of this section secures future opportunities for non-outfitted public access, and provides clarification to land managers about the scope of the bill.

We thank you for including these clear protections for the public.

It is apparent to us that the bill is not intended to impede the public's ability to engage in private recreational use of public lands. However, there is no guarantee that, if enacted, the bill will not have unintended consequences regarding non-outfitted recreational access to public lands. If moved forward for a vote, we respectfully request that the Subcommittee, in its written report, detail the sponsor's intentions to protect non-outfitted public access while also providing for improved management of, and increased accountability for, outfitted activities by which the public gains access to and occupancy and use of Federal land.

Sincerely,

JASON ROBERTSON,
National Policy Director.

STATEMENT OF JENNIFER LAMB, PUBLIC POLICY DIRECTOR,
NATIONAL OUTDOOR LEADERSHIP SCHOOL

Chairman Craig, Senator Wyden and members of the subcommittee, thank you for the opportunity to submit this statement to the Subcommittee on Public Lands and Forests regarding the Outfitter Policy Act, S. 1420. We ask that this statement be included in the official record of the hearing held on March 3, 2004.

The National Outdoor Leadership School (NOLS) is a non-profit organization that teaches outdoor skills, leadership and ethics to more than 8,800 students each year. Founded in 1965 and headquartered in Lander, Wyoming, NOLS employs more than 800 instructors and staff at eight locations and two professional institutes worldwide. Our annual revenues exceed $19 million. NOLS' mission is to be the leading source and teacher of wilderness skills and leadership that serve people and the environment.

From our five U.S. branch schools, NOLS is a permitted commercial operator in 21 National Parks, 23 National Forests, three National Wildlife Refuges and 20 Bureau of Land Management areas in nine western states. The core of our education programs includes extended backcountry expeditions of 10 to 93 days in length—our instructors and students spend significant amounts of time on public land. Our

management staff has considerable experience working with permitting systems of each of the four Federal land management agencies. In 2003, NOLS spent roughly $200,000 on commercial permit fees to operate on federal land in the U.S.

NOLS supports the primary purpose of S. 1420—to "establish terms and conditions for use of certain Federal land by outfitters, and to facilitate public opportunities for the recreational use and enjoyment of such land." We agree with many of the specific aspects of S. 1420 and have concerns about others. A brief summary of our position follows.

1. Fees

We are pleased to see language in the bill that requires consideration of fee equity amongst operators (Section 5(a)(5)), cumulative fee impact and overall fee burden (Section 5(b)(1)(B)), consolidation of fees (Section 5(b)(1)(C)), and accounting for use that crosses agency boundaries (Section 5(a)(3)). These are aspects of agency fee programs for which we have long advocated, and we appreciate the effort committee members have made to include them in the bill.

We have a couple of concerns regarding fee language. First, we ask that the bill be modified to clarify the language in Section 5(a)(4)(A) on adjusted gross receipts (AGR). Currently the bill specifies that, for the purposes of calculating permit fees, AGR will include revenue from "commercial outfitted activities conducted on Federal land". We want to be sure that the intention is that AGR specific to a permit includes revenues earned by the activities conducted under that permit. For example, a permitted operator will pay for a permit on the Shoshone National Forest based on the revenue earned from programs conducted under the Shoshone National Forest permit, and not based on revenue earned from other permits on other Federal land.

Our second concern regarding fees relates to Section 4(d)(2), which states that a competitive process will be employed to select an authorized outfitter if there is competitive interest in the activity to be conducted. The Bill does not specify whether the competitive process will be based on performance of operators, past history, financial qualifications, a fee bidding process, or other factors. While we are pleased to see that the criteria for granting an outfitter permit includes skill, experience, knowledge of the area, safety, education opportunities offered, etc., we are against the establishment of a permit system that favors those outfitters with the greatest ability to pay over organizations that perhaps specialize in a geographical area, a specific activity, or in programs serving lower income students or clients. We believe that the competitive authorization process referred to in the bill must be performance based and not evolve into fee bidding. Ability to pay should not dictate the permit authorization process.

2. Performance-Based Permit Renewal

We are pleased to see that Section 8 of S. 1420 defines an evaluation system based on the performance of operators, and that the bill authorizes permit revocation or suspension if operators fail to meet predetermined standards. As we have commented on previous versions of the Outfitter Policy Act, NOLS believes that a permit system designed around performance-based renewal will best serve the public, the resource, the agencies and commercial operators. Such a system will encourage outfitters to continue to learn, to consider the impact of their operation, to be accountable and to establish good working relationships with land managers. It rewards commercial operators for the right reasons.

That said, we have two concerns about the performance evaluation stipulations outlined in the bill. First, we would like to see language added to Section 8(a) that states that the performance evaluation system, in addition to ensuring the availability of safe and dependable outfitter services, will ensure that outfitted activities will be conducted in accordance with identified resource protection standards. Commercial operators must be engaged at every opportunity in the agencies' efforts to manage the resource for long-term sustainability.

Our second concern is more general and is related to the practical realities of implementing a performance-based evaluation system. Implementation of such a system will require careful consideration of the criteria that will be used to assess performance. Because not all outfitters are alike and many offer different activities and programs, the criteria must be flexible, yet equitable.

For the performance evaluation system to work effectively as defined in the bill, the agencies will have to dedicate enough resources to complete the annual evaluation of each permittee. Understanding the shortage of resources and the backlog of administrative—particularly permit-related—work facing some agencies, we encourage the committee to consider the possible outcomes of implementing such a system. The practical realities that the agencies face must be factored into the design of the

system to ensure its success. NOLS offers its assistance and experience in the field in designing such a system.

3. Permit Term

From an outfitter's standpoint, NOLS supports the bill's allowance for a permit term of up to ten years. A ten-year term encourages operators—particularly smaller organizations—who wish to invest in building high-quality and sustainable programs.

We believe, however, that the needs of operators and those of the agency, and thus the resource, need to be balanced. Land managers need the flexibility to manage the resource while outfitters need a stable enough environment to run a sustainable business. In light of this, we are pleased to see the stipulation in the bill that allows permit terms to be shortened if conditions on the land warrant a change to a management plan. This encourages both the agencies and the commercial operators to consider the resource and its use as an integrated system. It also encourages permitees to become more aware of and participate in the land management planning process, something NOLS believes is vitally important.

We see one potential sticking point in the language regarding permit term. Section 4(e)(1)(D)(ii) states that a term of 10 years or fewer can be set based on (1) foreseeable amendments to resource management plans that would create conditions that necessitate changes in the permit term; and (2) the Secretary and the authorized outfitter agree to the reduced permit term. There is potential for conflict in this case because it is possible that conditions on the land may change and the agency will see the need to issue permits with shorter terms but the operators will not agree. Rather than set the stage for protracted disagreement and stalemate, we believe that the bill should provide the agency with the ultimate authority to decide on a shorter term without the consent of the operator. The operator must be fully engaged in the discussion, and have the opportunity to affect the outcome, but the agency's flexibility to make good resource-based decisions must be preserved. Operators are authorized in Section 12 to appeal a decision if they believe it is unfair or inappropriate.

Also important, the bill preserves the agencies' ability to revoke a permit when an operator jeopardizes public health and safety or protection of the resource.

4. Academic Definitions

Section 17(b)(4) stipulates that outdoor activities and services for or related to academic credit and provided by "a bona fide and accredited academic institution" are not governed by this Act. Clarification is necessary, either in the bill itself or in ensuing regulation, to define what is considered "bona fide and accredited" in this case. While our classrooms are non-traditional, 75 percent of our 17- to 22-year old students earn college credit on their NOLS course. Yet, by the definition of "commercial outfitted activity" in Section 3 of the bill, NOLS is a commercial entity, governed by this Act. Which definition will apply?

This section of the bill essentially acknowledges that academic institutions' use of public land differs from traditional outfitted use and is therefore not managed by this legislation. While the mission, goals and objectives of these programs do generally differ, the activities they engage in are often similar in many ways. In light of this, we believe that academic use should be subject to the same or similar performance evaluation and expectations as traditional outfitted groups.

Confusion in the definition of academic or educational organization versus commercial entity has led some organizations to slip through the cracks in the management system, thereby avoiding permitting and evaluation altogether. This bill and ensuing guidance to the field should clearly define all categories of group use and the associated requirements and expectations.

5. Fair Allocation Amongst All User Groups

We have two points to raise under this heading. First, Section 17(b) of the bill states that the Act will not diminish the agencies' ability to establish levels of use and allocation among the outfitted and non-outfitted public. We strongly encourage the committee to consider the importance of providing guidance to the field that requires agencies to consider fully all types of use—permitted and nonpermitted, commercial and non-commercial—when establishing an allocation system. As a permitted operator, we have witnessed agency field offices that, when faced with setting limits on use or visitation to an area, will turn to commercial permits as a mechanism for controlling numbers, rather than evaluating and regulating all types of use. Permits provide a convenient mechanism for controlling use. While this is an important purpose of a permit, it is not the only tool for managing visitation. Use by institutional groups (e.g., nonprofit or academic institutions) and the nonpermitted public must also be considered and controlled appropriately.

Our second point relates to situations in which commercial use must be limited to protect the resource. We strongly support permit renewal based on performance and lengthier permit terms—these conditions are good for both operators and land managers. We also believe that they are good for the resource in the long run. Long-term operators have a vested interest in protecting the resource. However, we have one concern regarding allocation that potentially results from this approach. Commercial or institutional users who are interested in offering services on an infrequent basis in an area in which they are not permitted may have trouble acquiring a permit. An operator who doesn't get in before the limits are set might be shut out for ten years or more. We are concerned that new or occasional operators will be excluded unless a small portion of user days is reserved for their use.

6. Probationary Transfer

NOLS understands from direct experience the importance of permits on federal land to the stability and solidity of a commercial operator's business. We have no "issue with the provisions in the bill that allow for the transfer of a permit to a new operator. We do, however, believe that a new operator that receives access through a permit transfer should be subject to the same two-year probationary period that any new applicant must complete. At the end of a probationary period, a full performance evaluation should determine whether a standard-term permit is issued.

NOLS appreciates the effort and analysis that the committee has dedicated to the Outfitter Policy Act. We also appreciate the opportunity to provide our opinion on the proposed legislation.

STATEMENT OF VERA SMITH, CONSERVATION DIRECTOR, COLORADO MOUNTAIN CLUB

Please accept this as an official submittal to the hearing held by the Subcommittee on Public Lands and Forests on March 3, 2004 on S. 1420, the Outfitter Policy Act.

The Colorado Mountain Club (CMC) is one of Colorado's largest outdoor organizations with over 10,000 members and 16 chapters. Founded in 1912, the CMC strives to ensure high quality recreational experiences for its members and the public, protect the natural resources of the Southern Rocky Mountains, and educate the public on responsible and appropriate recreation.

The CMC conducts non-commercial activities as well as operates as a commercial institutional and public outfitter on public lands with an average annual commercial allocation on U.S. Forest Service administered lands of approximately 3,000 recreational visitor days. The commercial outfitting opportunities that the CMC offers to members and the public are entirely educational, focused on teaching responsible recreation, wild land ethics, volunteer leadership, conservation, natural history, and landscape art to adults and youth. In providing opportunities, we regard the public lands as a classroom more than a venue for recreation. Although the demand for our educational services is increasing, the availability for institutional outfitter special use permits is diminishing.

Like many other non-profit educational outfitters, the vast majority of the CMC's outfitted opportunities are organized and led by volunteers, resulting in use that is variable (with variability due to changing educational topics and volunteer availability). The result is that it can be difficult to obtain the required commercial permits because the developed recreational capacity has already been assigned to established (often larger) commercial outfitters. For example, the Forest Service prohibits the issuance of priority use assignments to institutional outfitters, forcing CMC and other non-profit institutional educational outfitters to seek temporary use authorizations each year (Outfitter Guide Administration Handbook, Northern Region, USDA, Forest Service, February 1997, page III-10; FSH 2709.11,41.53h), yet does not require that a "pool" of outfitted days for institutional educational outfitters be set aside.

Educational Outfitters Need Fixed Minimum Allocation

As the subcommittee considers how best to address improving the management of commercial outfitters on public lands, the subcommittee must also address the issues facing non-profit educational outfitters and not exacerbate the problems that these groups face. Non-profit educational outfitters such as the CMC provide critical visitor education—services that further the mission of the public land agencies—services that are integral to conserving natural and cultural resources and ensuring responsible behavior in the backcountry yet are not adequately provided by the agencies under current budgets. Yet, as stated above, non-profit educational outfitters are finding it increasingly difficult to acquire special use permits, in part be-

cause they are small, volunteer-based, and more variable in their operations, and because institutional outfitters are prohibited from being granted priority use authorizations. Because providing land-based education that furthers the goals of the agencies is a primary purpose of non-profit educational outfitters, these organizations should be assured a minimum annual allocation in order that they are not pushed off public lands in favor of larger commercial outfitting operations.[1]

Currently, the land management agencies in regard to issuing use allocations do not formally distinguish between commercial non-profit educational outfitters such as the CMC and other commercial outfitters such as snowmobile or jeep tour companies, and, consequently, do not assure that non-profit educational outfitters are guaranteed a minimum allocation. The bill, as introduced, would also fail to draw this important distinction and to ensure minimum allocations to non-profit educational outfitters; the bill would fail to recognize the role that non-profit educational outfitters play in furthering the goals of the public land management agencies and bolstering much-needed visitor education services that the agencies are unable to provide adequately under current budgets. Given that recreational capacity on public lands is limited, dispersed recreation is increasing, and land management agencies are fiscally challenged to provide much-needed educational services to the visiting public, it is only rational and appropriate that non-profit educational outfitters are granted an assured minimum allocation of the recreational capacity for developed (outfitted) recreation.

Outfitting Purpose Is To Serve the Public

The purpose of permitting outfitters is to provide the public alternative opportunities to visit public lands so long as such opportunities do not degrade the long-term condition of the land; it is not to ensure that businesses are successful absent a public need. Hence, the proposed legislation's emphasis on ensuring "successful business ventures" concerns us significantly. For example:

- The bill's renewal, transfer, and "successful business" provisions will force land managers to provide a disproportionate share of the available recreational capacity to outfitters in popular recreational areas, limiting the ability of land managers to take appropriate action to protect public resources and serve the public interest.
- The bill would elevate commercial outfitter permits to a legal status greater than other types of federal permits by loosening restrictions on permit sale and transfer, and by restricting the ability of land managers to modify permits.

Thank you for the opportunity to comment.

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[1] Legislation would have to provide a careful definition for educational outfitter. For example, an educational outfitter should be a non-profit organization that has a mission statement with a primary purpose (not necessarily the only primary purpose) of furthering understanding, appreciation, and stewardship of public lands.